

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CHARLES E. McMANAMA,

CV 05-1074-ST

Plaintiff,

ORDER

v.

EDWARD J. JONES and ROBERT
BONAPARTE,

Defendants.

CHARLES E. McMANAMA
525 N.W. Sixth Avenue
Apartment 101
Estacada, OR 97023

Plaintiff, *Pro Se*¹

¹ Magistrate Judge Janice M. Stewart issued Findings and Recommendation before Plaintiff served the Complaint. Accordingly, there is no defense counsel of record at this time.

BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#3) on July 15, 2005, in which she recommended the Court *sua sponte* dismiss Plaintiff Charles F. McManama's Complaint for lack of subject matter jurisdiction on the ground that Defendants Edward J. Jones and Robert Bonaparte cannot be liable for damages under 42 U.S.C. § 1983. Plaintiff filed timely objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Business Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). This Court has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

The Court, however, must permit a *pro se* litigant the opportunity to correct the deficiencies of his complaint unless it is clear those deficiencies cannot be cured by amendment. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th

Cir. 1988). See also *Noll v. Carlson*, 809 F.2d 1446, 1447 (9th Cir. 1987).

Plaintiff did not state sufficient facts in his Complaint for the Court to determine whether Defendant Bonaparte can be held liable under § 1983. The Court, therefore, will permit Plaintiff to file a motion for leave to file an amended complaint to cure this deficiency. Any such motion must be accompanied by a copy of Plaintiff's proposed amended complaint as required by Local Rule 15.1(c) and a memorandum in support of the motion that sets forth a legal basis to state a § 1983 claim against Defendant Bonaparte. In addition, the motion must be filed no later than September 13, 2005.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Stewart's Findings and Recommendation (#3) and, accordingly, **DISMISSES** Plaintiff's Complaint. The Court, however, will permit Plaintiff to file a motion for leave to amend his Complaint no later than September 15, 2005, to correct the deficiencies of the Complaint as to Defendant Robert Bonaparte.

The Court **DENIES as moot** Plaintiff's Motion to Proceed *in forma pauperis* on appeal of the Findings and Recommendation (#____) because the Findings and Recommendation is not a final appealable order. Plaintiff may renew his motion to proceed *in*

forma pauperis on appeal if he chooses not to attempt to correct the deficiencies of his Complaint and instead decides to appeal this Order.

IT IS SO ORDERED.

DATED this 25th day of August, 2005.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge

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